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HOMICIDE—DEFEASANCE OF SLAYER'S CLAIM TO PROPERTY OR CONTRACT RIGHTS ACCRUING AT VICTIM'S DEATH—UNINTENDED OR NON-CRIMINAL KILLING—[Missouri].—A conveyed a parcel of land to B with a provision that title to the land should revert if B should predecease A. The grantor killed the grantee and immediately thereafter was adjudged insane. The guardian of the insane grantor sold the land to plaintiff, who brought an action to quiet title against the original grantee's heirs. *Held* for plaintiff, title having reverted to A, the insane grantor, under the terms of the conveyance. The rule that a person cannot benefit by his own wrong was held inoperative to deprive A of the property since he was insane at the time of the homicide.¹

The instant case seems to be the first involving the effect, upon a reversioner's right to take, of his having slain the prior tenant. However, a similar problem has frequently arisen in connection with descent, insurance, and wills.

By statute in twenty-five states² and by decision in others,³ a murderer is not permitted to take, under the statute of descent, the property of the murdered intestate. However, the slayer may take by descent where (1) at the time of the killing he was insane⁴ or (2) the killing was unintentional and the result of provocation.⁵

Similarly, where the beneficiary of a life insurance policy murders the insured, recovery is denied to the beneficiary.⁶ Recovery by the insured's administrator is, however, often allowed, thereby enabling the murderer to take a distributive share of the insurance from the estate in the event that the murderer is an heir at law of the insured and that the particular juris-

1. *Eisenhardt v. Siegel* (Mo. 1938) 119 S. W. (2d) 810.

2. See Note (1936) 49 Harv. L. Rev. 715, and Note (1934) 44 Yale L. J. 164 for a compilation of the states that have passed this type of statute. Arkansas, Ark. Crow & Moses' Stat. (Supp. 1927) sec. 3514a, 3514b; Kansas, Kan. Rev. Stat. Anno. (1923) sec. 22-133; and Oklahoma, Okla. Harlow's Stat. (1931) sec. 1616, are in this group.

3. *Price v. Hitafer* (1933) 164 Md. 505, 165 Atl. 470; *Garwols v. Bankers' Trust Co.* (1930) 251 Mich. 420, 232 N. W. 239; *Perry v. Strawbridge* (1907) 209 Mo. 621, 108 S. W. 641, 16 L. R. A. (N. S.) 244, 123 Am. St. Rep. 510, 14 Ann. Cas. 92; *Van Alstyne v. Tuffy* (Sup. Ct. 1918) 103 Misc. 455, 169 N. Y. S. 173; *In re Sigsworth* [1935] 1 Ch. 89, 104 L. J. Ch. 46. *Contra*: *Hagan v. Cone* (1917) 21 Ga. App. 416, 94 S. E. 602; *Wall v. Pfanschmidt* (1914) 265 Ill. 180, 106 N. E. 785, L. R. A. 1915C 328, Ann. Cas. 1916A 674, in which it is stated that the courts denying murderer recovery are really guilty of judicial legislation, since the statute of descent does not provide for any exception. This reasoning has been supported by many cases. See also Note (1936) 49 Harv. L. Rev. 715; and *Shellenberger v. Ransom* (1894) 41 Neb. 631, 59 N. W. 935.

4. *In re Houghton* [1915] 2 Ch. 173; *In re Pitts* [1931] 1 Ch. 546.

5. *In re Wolf* (Surr. Ct. 1914) 88 Misc. 433, 150 N. Y. S. 738. See *In re Kirby's Estate* (1912) 162 Cal. 91, 121 Pac. 370, 39 L. R. A. (N. S.) 1088; *Hogg v. Witham* (1926) 120 Kan. 341, 242 Pac. 1021, in which cases there was a statute which prevented a convicted murderer from taking by descent. Both courts held that the statute should be strictly construed and that the slayer should be allowed to take when he was convicted of mere manslaughter.

6. See Note (1930) 70 A. L. R. 1539.

diction allows the murderer to take by descent.⁷ Other states have avoided this latter result by denying recovery to the administrator of the insured if the insured's estate is already sufficient to pay creditors,⁸ or by holding that the administrator is to take the insurance and distribute the same as if the murderer had predeceased the insured, thereby giving the proceeds to the insured's heirs at law exclusive of the murderer and his heirs.⁹ Again, however, where the beneficiary was insane at the time that he committed the homicide,¹⁰ or where the homicide was unintentional and therefore merely involuntary manslaughter,¹¹ he may recover.

A devisee under a will who murders the testator cannot recover,¹² even, so it has been held, though the homicide was a mere unintentional killing and therefore only manslaughter.¹³ It is immaterial that the murderer did not know of the will or the devise.¹⁴ However, where the slayer was insane, he is entitled to take under the will of the victim.¹⁵

The rule that a sane murderer is not entitled to the property of the victim¹⁶ is based on the maxim that a person cannot benefit by his own wrong. Where the slayer is insane, the courts have uniformly held that he can recover, the maxim no longer being applicable because the homicide was not a crime or a felony,¹⁷ or because the homicide was not intentional.¹⁸ This conflict of reasoning becomes significant in the cases of involuntary manslaughter. Some courts allow recovery because the homicide was no longer intentional;¹⁹ others deny recovery because a felony still existed.²⁰

7. *Equitable Life Assurance Society v. Weightman* (1916) 61 Okla. 106, 160 Pac. 629; *Murchison v. Murchison* (Tex. Civ. App. 1918) 203 S. W. 423.

8. *Johnston v. Metropolitan Life Ins. Co.* (1919) 85 W. Va. 70, 100 S. E. 865; *Wickline v. Phoenix Mutual Life Ins. Co.* (1928) 106 W. Va. 424, 145 S. E. 743.

9. *Slocum v. Metropolitan Life Ins. Co.* (1923) 245 Mass. 565, 139 N. E. 816, 27 A. L. R. 1517; *De Zotell v. Mutual Life Ins. Co.* (1932) 60 S. D. 532, 245 N. W. 58.

10. *Holdom v. Ancient Order of United Workmen* (1895) 159 Ill. 619, 43 N. E. 772, 31 L. R. A. 67, 50 Am. St. Rep. 183; *New York Life Ins. Co. v. Veith* (Tex. Civ. App. 1917) 192 S. W. 605.

11. *Schreiner v. High Court of Illinois Catholic Order of Foresters* (1890) 35 Ill. App. 576; *Hull v. Metropolitan Life Ins. Co.* (1917) 26 Pa. Dist. Rep. 197; contra, *De Zotell v. Mutual Life Ins. Co.* (1932) 60 S. D. 532, 245 N. W. 58.

12. *Riggs v. Palmer* (1889) 115 N. Y. 506, 22 N. E. 188, 5 L. R. A. 340, 12 Am. St. Rep. 319; *Estate of Wilkins* (1927) 192 Wis. 111, 211 N. W. 653; cf. *Ellerson v. Westcott* (1896) 148 N. Y. 149, 42 N. E. 540, where the court allowed the murderer to take the legal title but said by way of dictum that a court of equity would intervene and prevent the enjoyment of the estate by the murderer.

13. *In re Hall* [1914] P. 1; *Lundy v. Lundy* (1895) 24 Can. Sup. Ct. 650, rev'g *McKinnon v. Lundy* (1894) 21 Ont. App. 560.

14. *Estate of Wilkins* (1927) 192 Wis. 111, 122 N. W. 653.

15. *In re Pitts* [1931] 1 Ch. 546.

16. *Supra*, notes 2, 3, and 12; Note (1930) 70 A. L. R. 1539.

17. *New York Life Ins. Co. v. Veith* (Tex. Civ. App. 1917) 192 S. W. 605; *In re Houghton* [1915] 2 Ch. 173; *In re Pitts* [1931] 1 Ch. 546.

18. *Holdom v. Ancient Order of United Workmen* (1895) 159 Ill. 619, 43 N. E. 772, 31 L. R. A. 67, 50 Am. St. Rep. 183.

19. *Schreiner v. High Court of Illinois Catholic Order of Foresters*

It will be noted that while the maxim is thus sometimes applied to cases of involuntary manslaughter, the policy behind the maxim, *viz.*, to deter the commission of crimes for the purpose of obtaining property, cannot be said to apply to accidental or unintentional killings. It is nevertheless submitted that the maxim should be applied, according to its terms, to all cases of felonies, whether committed by accident or with intent to take the life of the victim. By adoption of a rule that the felon will always be denied recovery while recovery will be allowed where there is no legal wrong,²¹ there will be resultant simplicity and certainty of application of the maxim which in the writer's judgment will more than compensate for disregarding the rationale of deterrence.

E. M. S.

INSURANCE—CANCELLATION BY MAIL—[Texas].—In a recent Texas case insured sued on an accident policy which contained a clause providing for cancellation by the company by written notice mailed to insured's last address as shown by the records of the company. Notice of cancellation was mailed by the company the day before the accident on which the suit was based. Insured contended that the cancellation was not effective until he received the notice. *Held*, that under this cancellation clause, the notice was effective when mailed.¹

There is some conflict of authority as to whether notice of cancellation sent by mail must be received before becoming effective.² However, a substantial preponderance of the decisions holds that notice of cancellation sent by mail must be received to be effective.³

The leading case supporting the instant decision is *Wolunter v. United States Casualty Co.*,⁴ where it was said that "the assured assumed the risk of due receipt of that notice."⁵ In *Dent v. Monarch Life Ins. Co.*,⁶ reaching

(1890) 35 Ill. App. 576; *In re Wolf* (Surr. Ct. 1914) 88 Misc. 433, 150 N. Y. S. 738; *Hull v. Metropolitan Life Ins. Co.* (1917) 26 Pa. Dist. Rep. 197.

20. *De Zotell v. Mutual Life Ins. Co.* (1932) 60 S. D. 532, 245 N. W. 58; *In re Hall* [1914] P. 1; *Lundy v. Lundy* (1895) 24 Can. Sup. Ct. 650, *rev'g McKinnon v. Lundy* (1894) 21 Ont. App. 560.

21. *E. g.*, where a homicide is justifiable or committed by an insane person.

1. *California-Western States Life Ins. Co. v. Williams* (Tex. Civ. App. 1938) 120 S. W. (2d) 844.

2. 6 Couch, *Cyclopedia of Insurance Law* (1st ed. 1930) 5094, sec. 1440. For a discussion of the question with reference to fire insurance policies, see Note (1914) 50 L. R. A. (N. S.) 35.

3. *American Fire Ins. Co. v. Brooks* (1896) 83 Md. 22, 34 Atl. 373; *Healey v. Ins. Co. of Pa.* (1900) 50 App. Div. 327, 63 N. Y. S. 1055; 5 Cooley, *Briefs on Insurance* (2d ed. 1927) 4589.

4. (1919) 126 Va. 156, 101 S. E. 58. The case was finally decided on the question of proper address, but the decision on the sufficiency of mailing of notice was necessary to the disposition of the case and is therefore not mere *dictum*.

5. 126 Va. at 166, 101 S. E. at 61.

6. (1936) 231 Mo. App. 283, 98 S. W. (2d) 123.